

**Colorado Department of Public Health and Environment
Hazardous Materials and Waste Management Division
Administrative Policy (Updated September 2007)**

Policy Name:

Public Review of Records Under the Colorado Open Records Act

Objectives

- To provide the public with timely, orderly, and efficient access to all non-confidential Hazardous Materials and Waste Management Division (HMWMD) records in accordance with the Colorado Open Records Act (CORA).
- To ensure that all requests are handled uniformly and equitably under the law.
- To provide procedures adequate to ensure the integrity of the records.
- To define the types of public review requests.

Policy

HMWMD will comply with Colorado law and Health Department policy:

1. Colorado Revised Statute § 24-72-203.

a. Public records open to inspection

(1) (a) All public records shall be open for inspection by any person at reasonable times.....the official custodian of any public records may make such rules with reference to the inspection of such records as are reasonably necessary for the protection of such records.....

(3) (b) The date and hour set for the inspection of records not readily available at the time of the request shall be within a reasonable time...a "reasonable time" shall be presumed to be three working days or less. Such period may be extended if extenuating circumstances exist.....extension shall not exceed seven days....that extenuating circumstances exist shall be made in writing by the custodian and...be provided to the person making the request within the three-day period.

2. Colorado Revised Statute § 24-72-204.

a. Allowance or denial of inspection -- grounds -- procedure -- appeal.

(1) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on

one or more of the following grounds or as provided in subsection (2) or (3) of this section:

(a) Such inspection would be contrary to any state statute.

(b) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law.

(c) Such inspection is prohibited by rules promulgated by the Supreme Court or by the order of any court.

(2) (a) The custodian may deny the right of inspection.....disclosure to the applicant would be contrary to the public interest.

3. Colorado Revised Statute § 24-72-205.

a. Copies, printouts, or photographs of public records.

(1) In all cases in which a person has the right to inspect any public record, he may request that he be furnished such copies, printouts, or photographs for a reasonable fee.....not to exceed \$.25 per page. Where fees for certified copies or other copies, printouts, or photographs of such record are specifically prescribed by law, such specific fees shall apply.

(2)..... If other facilities are necessary, the cost of providing them shall be paid by the person desiring a copy, printout, or photograph of the records.

(3) If the public record is a result of computer output.....such fee may be reduced or waived by the custodian if the electronic services and products are to be used for a public purpose, including public agency program support, nonprofit activities, journalism, and academic research.

**4. Colorado Department of Public Health and Environment,
Department wide policy regarding copying charges.**

a. In order to achieve uniformity of copying charges within the department and to cover the associate cost of this service, the charge for copying small amounts of materials will be set at \$.25 per page...department-wide.

b. Requests for copying need not be complied with immediately.....date must be within three working days of the time of the request for records.

c.records within the department have restricted access...each division should periodically evaluate which records are restricted in accordance with current legal guidelines....any questions should be referred to the Attorney General's Office.

- d. Documents which are frequently requested, i.e. laws, regulations, annual reports, etc. can be priced at below the \$.25 per page, at a flat rate per document.
- e. Checks should be made out to the Colorado Department of Public Health and Environment with monies remitted to Accounts Receivable in Accounting.

The HMWMD Records Manager is the official custodian of HMWMD records.

All public reviews are to be handled by the Public Review Specialist to ensure that applicable fees are collected and all policies and procedures are followed. Any technical staff receiving requests for information in the form of a public access request for documents should work closely with the Public Review Specialist to facilitate the review.

Definitions:

Environmental Records Search Program--an environmental site assessment of property in the state of Colorado which involves searching the following resources for a particular site within a half mile radius:

- Methane gas study (Raymond Vail Report 1979).
 - Investigation of Methane Gas Hazards (City and County of Denver 1981).
 - CERCLIS (potential Superfund list resulting from the Comprehensive Environmental Response Compensation Liability Act).
 - Solid Waste (current or open landfills and closed or abandoned landfills)
 - SARA Title III.
 - UMTRA (Uranium Mill Tailings Remedial Action Sites and vicinity properties).
 - ERNS (Emergency Response Notification System--property spills reported to CDPHE since 1990).
- and the following resources within a one mile radius:
- RCRA (Resource Conservation and Recovery Act) generators list.
 - RCRA TSD (Resource Conservation and Recovery Act) Treatment, Storage, and Disposal Facilities.
 - NPL (National Priority List, Superfund/Remediation).

Electronic records request--any records stored on the computer, not generated in hard copy format for easy duplication, which to produce must be manipulated by staff to provide output either to hard copy, floppy, or CD-ROM media.

Public Records Review--any documents maintained by the Colorado Department of Health and Environment, Hazardous Materials and Waste Management Division, in the Records Center or by technical staff documenting permitting, regulation, cleanup, and monitoring the contamination of specific sites in the state in either hard copy or microfilm format. The following program files are surveyed by the HMWMD records staff and pulled for the requestor to review at a specific time convenient for both parties.*

Compliance Program

- RCRA (Resource Conservation and Recovery Act) Hazardous Waste Cleanup
- RCRA (Resource Conservation and Recovery Act) Monitoring and Enforcement
- Solid Waste

Federal Facilities Program

- DSMOA (Defense and State Memorandum of Agreement) Base Closures and Redevelopment
- RCRA (Resource Conservation and Recovery Act) Hazardous Waste Cleanup
- RCRA (Resource Conservation and Recovery Act) Inspections and Enforcement

Remediation Program

- Superfund
- Preliminary Assessment/Site Investigation (PA/SI)

*All or some of these resources will be searched depending on the requirements of the request.

HMWMD Colorado Open Records Act Requests Procedures

Purpose:

These procedures have been developed to ensure that the public has timely access to HMWMD records that are neither CORA exempt nor privileged, CDPHE policy is followed, and the integrity of the records is safeguarded.

Procedures:

Each public review request shall be in writing to the Public Review Specialist; a request form is available in person at HMWMD, can be filled out by the Public Review Specialist at the time of a telephone request, or a list can be faxed to the Public Review Specialist.

Upon receipt of the request the Public Review Specialist will do the following:

1. Review all computer and paper repositories for all relevant information related to the specific site or area search in the case of an Environmental Records Search.
2. In cases where the list of documents or files is more than a page, a copy of the inventory of files may be faxed (10 pages or less) or mailed (over 10 pages) to the requestor to facilitate selection of documents needed for the review.
3. Verify that all records are available; contact technical staff when necessary to coordinate access to any information they may have related to the request.
4. Pull and stage all documents for review, including any documents stored off site.
5. Contact the requestor to set an appointment for the review; reviews are scheduled during regular business hours, 8 a.m. to 12 p.m. and 1 p.m. to 5 p.m. Monday through Friday.
6. Any requests for the same site information which follows the initial request will be responded to in order of receipt. Time will be allowed for any copying the initial requestor may need.
7. Specific instructions will be provided to the reviewer the day of the review.
 - a. Files will be viewed only in the HMWMD Records Center viewing room.

- b. A driver's license or other photo identification is required to be held by the Public Review Specialist during the review. The identification will be returned upon completion of the file review.
- c. No documents are to be removed from or added to the files.
- d. Any documents the reviewer wishes to have copied are to be marked with Post-It Notes with multiple pages paper clipped together. Copies will be done by HMWMD staff or by third party vendor depending on the volume.
- e. Ad hoc copying during the review will not be accommodated; all files are to be reviewed before any copies are made.
- f. Charges for copying are as follows:
 - \$.25 per page for the first 30 pages, copied by Records Center Staff at the time of the review, checks made payable to CDPHE.
 - \$.18.5 per page for any copy job over 30 pages, to be sent to a third party vendor and billed directly to the requestor, with check made payable to the vendor. The \$.18.5 cost is for straight copying of 8 ½" X 11". Two sided copies, 11" X 17"size, blueprints, maps, and pictures will be charged at a separate rate. A form "Request for Copying Documents" will be required for signature by the requestor obligating payment by the requestor for any copy charges incurred. (Exhibit 1)
- g. **Groups exempt from copy charges are:**
 - 1) **EPA's Oversight of the Authorized Hazardous Waste Program as provided by the Memorandum of Agreement.**
 - 2) **Members of the press with current and valid press credentials are allowed 30 copies at no charge. Copies will be provided at the time of the review. Any copies requested over the initial 30 will be charged at the regular rate (see f. above).**

- 8. If copying services are provided by the outside vendor, the requestor will be notified when the copies are available for pickup (usually within three days).

Location of Public Records Review —With the exception of the procedures outlined below, all files will be reviewed at the Hazardous Materials and Waste Management Division Records Center viewing room located at 4300 Cherry Creek Drive South in Denver.

When requested and the Division's criteria to send records off-site are met, provisions can be made to make files available for review in the Grand Junction Office at the requestor's expense. Files can be sent off-site to a Hazardous Materials and Waste Management Division office when: 1) The absence of the records from the Record Center will not impede the HMWM Division staff from performing their normal day to day functions. 2) The complete file will fit in a large Fed Ex box, size 12" x 18" x 3 1/4".

Files will be shipped with the state's designated overnight courier at the requestor's expense. At the time the requestor arrives to review the file, the requestor will pay the cost of transporting the files to and from Grand Junction. Files may be kept at the HMWMD Grand Junction office for a maximum of three days, unless there is an urgent need for them in the Denver Office. A staff member of the Grand Junction office must be present at the time of the review. Reviews will be scheduled according to the availability of the Grand Junction Staff.

When files are to be reviewed in Grand Junction:

- a. The Record Center will contact the appropriate Division staff members to review the file content and obtain approval for the records to be sent off-site for the review.
- b. The Record Center will advise the requestor of the size of the file and that he or she will be responsible for the cost of transporting the records to and from Grand Junction.
- c. Notify Grand Junction of the request and provide the name and phone number for scheduling the appointment to view the records.
- d. Grand Junction will contact the requestor to set an appointment for the review. **Reviews are scheduled according to the availability of the Grand Junction staff.**
- e. Once the Record Center receives notification of exact time and date of review, documents are prepared for overnight shipping and cost of the round trip is determined. An acknowledgment form will be faxed to the requestor for his signature acknowledging his/her responsibility for the transportation cost.
- f. When the signed acknowledgment is received in the Records Center, the file is shipped to Grand Junction
- g. When the requestor arrives to review the records, the Grand Junction representative will collect the monies for the round trip cost of transporting the records before the review takes place.

- h. The records will be allowed to remain in Grand Junction for a maximum of three days, unless there is an urgent need for them in the Denver office. If the review is postponed, the records will be returned to Denver and the request will follow the queue with other requests.
- 9. Environmental Records Searches (\$25.00 per hour) are paid in advance with the research information and bill for services mailed upon completion of the search.
- 10. Mailing services are available for all customers at no charge.
- 11. When the file review is complete and copies have been delivered to the customer, files are returned to the shelf and to technical staff or staged for the next review.
- 12. The staff in all cases will assist the requestor in further defining the search by asking questions and will provide indexes of all files related to a specific site as necessary; however the staff will not define nor perform any specific searches for the requestor.
- 13. All public review requests will be responded to within three days, i.e. the requestor will be contacted and notified of a time for the review. Most reviews are scheduled and completed within three days. In some cases due to conflicts with other requests there may be a delay, the requestor will be contacted and apprised of any delays and an approximate time frame when they may view the records.
- 14. Environmental records searches are paid for in advance and are completed and mailed within ten days.
- 15. All transactions for copying services will be paid for by cash or check. No credit cards are accepted and no billing of third party vendor services is done by HMWMD.
- 16. Special requests for information in electronic format will be reviewed to determine the volume of the request, the staff time required to produce the information, and the type of format in which to deliver the information, before setting a fee for production.
Procedures for customers will be posted in the reviewing area.
(Exhibits 2 & 3)

Exhibit 1

**Request for Copying Documents
Hazardous Materials and Waste Management
Division of the Colorado Department of Public Health and Environment**

The following are documents which I am asking HMWMD to copy:

Document _____

Request: _____

For copying 30 pages or less:

Generated by HMWMD staff @ \$.25 per page: _____

Check paid to: CDPHE

For copying more than 30 pages:

Generated by third party vendor @ \$.18.5 per page: _____

NOTE: The \$.18.5 cost is for straight copying of 8 ½" X 11". Two sided copies, 11" X 17" size, blueprints, maps, and pictures will be charged at a separate rate.

Check paid to: Colorado Litigation

I understand that I am financially responsible for making this request and will pay all the associated costs involved in copying the same.

Requestor (print): _____

Signature: _____

Address: _____

City/State/Zip: _____

Date: _____ Approved: _____

Exhibit 2

COLORADO OPEN RECORDS ACT (CORA) **INSTRUCTIONS FOR PUBLIC REVIEW**

1. An appointment should be made to review files.
2. File requests can be submitted in writing by letter, fax, or e-mail, or telephoned to:

Ms. Diana Huber
Colorado Department of Public Health and Environment
Hazardous Materials Records Center
4300 Cherry Creek Drive South B-215
Denver, Colorado 80246-1530
(303) 692-3331
Toll free: (888) 569-1831, ext. 3331
FAX: (303) 759-5355
E-mail requests: diana.huber@state.co.us

All requests should include the following information:

- **date**
- **company name**
- **requestor's name**
- **address**
- **telephone number**
- **site address(es) for review**
- **site name(s) for review**
- Upon receipt of the request a computer search is done. All information is collected, the requestor is notified, and a time is scheduled for the review. **All requests will be responded to within three days.** Reviews will take place during regular business hours, Monday through Friday 8 a.m. to 12 p.m. and 1 p.m. to 5 p.m. Files will be reviewed on the premises.
- At the time of the review all requesters will be required to provide photo identification such as a Driver's License or state photo identification prior to the review. The identification will be returned when the review is completed.
- The requestor may take notes, bring tape recording devices, and/or portable computers. Outside photocopiers are not allowed.
- Copies (up to 30) can be provided the day of the review at a cost of \$.25 per page. Any copying job over 30 pages will be available within three days, for pick-up or mailing at a cost of \$.18.5 per page. Payment in the form of cash or check must be made at the time the copies are received in person or prior to mailing. We do not accept credit cards and cannot bill for services.
- Certified copies for legal purposes will be done upon request at no charge. There is **an additional five days needed to provide this service.**

Note: Under Colorado law, 18-8-114 C.R.S (1989), it is a class 1 misdemeanor for a person to knowingly make a false entry or alter any public record or to destroy, mutilate, conceal, remove, or impair the availability of any public record. "Public record" is defined as all official books, papers, or records created, received, or used by or in any governmental office or agency.

Exhibit 3

NOTICE
COLORADO DEPARTMENT OF HEALTH AND ENVIRONMENT
HAZARDOUS MATERIALS AND WASTE MANAGEMENT DIVISION

PHOTOCOPY CHARGES

Small Jobs:

Same day copies

30 copies or less\$.25 per page

Make checks payable to **CDPHE**.

Large Jobs:

Three day turn around

30 + copies \$.18.5 per page

Make checks payable to **Colorado Litigation**.

NOTE: The \$.18.5 cost is for straight copying of 8 ½" X 11". Two sided copies, 11" X 17"size, blueprints, maps, and pictures will be charged at a separate rate.

We will provide mail delivery upon request.

Cash or check is required upon receipt of any copy job. We cannot take credit cards and we cannot bill.